



In this interlocutory appeal from a small claims action, Appellant-Defendant, Jill Baird, challenges the court's denial of her motion to dismiss the Statement of Claim of Plaintiff-Appellee, ASA Collections ("ASA"), for improper venue. Upon appeal, Baird claims the small claims court erred in denying her motion to dismiss and in failing to award her attorney fees pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*

We affirm.

On March 10, 2006, ASA filed its Statement of Claim in Dearborn Superior Court against Baird for the sum of \$4,795.63 in unpaid property owners dues and \$750 in attorney fees for "failure to pay on account of Hidden Valley Lake P.O.A.<sup>[1]</sup>" App. at 15. Attached to such claim was the tax deed issued February 18, 1998 showing Baird had purchased Hidden Valley Lake Lot 2171, located in Dearborn County, at a tax sale on October 23, 1996. Also attached was an Assignment of Receivable, transferring the rights of Hidden Valley Lake P.O.A. ("Hidden Valley") to collect funds to ASA.<sup>2</sup> The complaint listed Baird's address as "1301 Kiowa Trail NE" in "Greensburg IN 47240." App. at 15. Greensburg is located in Decatur County.

In response, on April 5, 2006, Baird filed a Motion to Dismiss for Improper Venue requesting pursuant to the FDCPA that the action be dismissed or transferred to Decatur County. In support of such motion, Baird stated that she was a resident of Decatur

---

<sup>1</sup> P.O.A. presumably refers to "Property Owners Association."

<sup>2</sup> The Assignment of Receivable does not specify the specific amount receivable but merely states that Hidden Valley "conveys, transfers and assigns to ASA Collections, all right, title and interest in all moneys due or that may become due from Debtor(s) Jill Baird upon the annexed statement of account, (subject to the contractual terms with ASA Collections)." App. at 18.

County, that she had never resided in Dearborn County, and that pursuant to the FDCPA, proper venue lay in the county in which she resided, specifically Decatur County. Additionally pursuant to the FDCPA, Baird requested attorney fees and expenses incurred as a result of her motion resisting venue.

ASA filed a response to Baird's motion to dismiss alleging jurisdiction was based upon the claim of the original account holder, Hidden Valley, and also that Baird's real property from which the allegedly delinquent fees arose created in rem jurisdiction over the matter in Dearborn County.

Following a hearing on April 21, 2006, the trial court denied Baird's motion to dismiss. In denying the motion, the court applied the FDCPA and reasoned that ASA had demonstrated that Baird had provided a certificate of sale of real estate in Dearborn County, that such real estate was the basis of the claim, and that Dearborn County was a proper venue.

On May 22, 2006, Baird filed a Motion to Correct Error claiming the court's denial of her motion to dismiss was in error on the grounds that ASA had failed to demonstrate, pursuant to the FDCPA, that the tax deed was a contract or that ASA's claim arose out of such deed. Baird further stated in such motion that the FDCPA preempted any conflicting small claims rules. In requesting dismissal of the claim, Baird also requested attorney fees in the amount of \$1,500.

Following the appointment of a special judge, Baird's motion was denied.<sup>3</sup> Baird filed her notice of appeal on November 21, 2006.

Upon appeal, Baird claims that the court erred in denying her motion to dismiss. Baird argues that the FDCPA applies to this case and that pursuant to the dictates of the venue provisions in the FDCPA, Dearborn County is an improper venue.<sup>4</sup>

Pursuant to Indiana Small Claims Rule 11(A), judgments shall be subject to review as prescribed by relevant Indiana rules and statutes. When we review a trial court's interlocutory order on a motion to dismiss for incorrect venue, our standard is abuse of discretion. Hollingsworth v. Key Benefit Administrators, Inc., 658 N.E.2d 653, 655 (Ind. Ct. App. 1995), trans. denied. We will find an abuse of discretion if the trial

---

<sup>3</sup> In its Order on Motion to Correct Error, the court indicated that the Motion to Correct Error was filed on May 22, 2006 and that pursuant to Indiana Trial Rule 53.3 such motion is deemed denied forty-five days after it is filed. The court indicated, however, that it was unaware whether the Change of Venue from Judge tolled that forty-five days. In any event, the Motion to Correct Error was denied.

<sup>4</sup> The FDCPA makes the following provision for venue:

“(a) Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.”  
15 U.S.C.A. §1692(i).

Indiana Small Claims Rule 12(A) provides the following:

“Proper venue for a case filed in the small claims docket of a Circuit, Superior, or County Court shall be in the county where the transaction or occurrence actually took place or where the obligation was incurred or is to be performed, or where one of the defendants resides or has his or her place of employment at the time the complaint is filed.”

court's decision is "clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law." Id. (quotation omitted). Under Indiana Trial Rule 8(C), the party asserting improper venue carries the burden of proof. We may affirm the lower court's judgment if it is sustainable on any theory or basis supported by the record. Bedree v. DeGroote, 799 N.E.2d 1167, 1177 (Ind. Ct. App. 2003), trans. denied.

We observe that at the hearing, ASA urged the court to determine venue according to Indiana Small Claims Rules, while Baird urged the court to determine venue according to the FDCPA, which Baird claimed preempted all other rules to the contrary. In its ruling denying Baird's motion to dismiss, the court conducted its analysis pursuant to the FDCPA.

In spite of the fact that the trial court conducted its analysis pursuant to the FDCPA, we are unconvinced Baird met her burden to prove that the FDCPA was applicable. Under the FDCPA, "debt" is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C.A. § 1692(a)(5). Baird presented no facts in her motion to dismiss or at the hearing tending to support her claim that her alleged debt qualified under the FDCPA. Indeed, apart from the parties' statements at the hearing that the alleged debt involved "unpaid property owners dues," the record demonstrates nothing establishing the transaction by which the alleged homeowners dues debt arose, nor does it indicate the

purpose of the property giving rise to the alleged dues.<sup>5</sup> Tr. at 4. Given this lack of information, we question the lower court's denial of Baird's motion to dismiss pursuant to its substantive interpretation of the FDCPA.<sup>6</sup>

Having found that Baird failed to establish the applicability of the FDCPA, we look to Small Claims Rule 12, which indicates venue in a small-claims action is proper if it lies in the county "where the transaction or occurrence actually took place or where the obligation was incurred or is to be performed." The parties agree the alleged debt involves property owners dues for real estate located in Dearborn County. At the hearing, Baird's counsel stated such dues had been reduced to a lien against that property. We conclude the evidence supports a finding of proper venue in Dearborn County.

The judgment of the trial court is affirmed.

ROBB, J., and VAIDIK, J., concur.

---

<sup>5</sup> We recognize that homeowners fees have been construed to fall under the FDCPA. See Newman v. Boehm, Pearlstein & Bright, Ltd., 119 F.3d 477, 481-82 (7th Cir. 1997). In contrast with Newman, however, in this case we know nothing regarding the facts of the alleged debt beside the fact that they are stated to be "unpaid property owners dues." Indeed, the instrument by which the obligation for such fees was created is not even in the record, nor is there anything in the record supporting ASA's claim as to their amount.

<sup>6</sup> Not only are we unable to determine from this record whether the facts of this case involve the "debt" contemplated by the FDCPA, we question whether a certificate of sale of real estate at public auction is the type of "contract" contemplated by the Act or that the ownership of real property establishes residence.